

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
FRANCISCO RODRIGUEZ and ARISTIDES ALFREDO
DILLATORO

Plaintiffs,

- against -

RIDGE RESTAURANT, INC. d/b/a ALFREDO'S PIZZERIA,
DENNIS D'ONOFRIO and PHILIP D'ONOFRIO,

Defendants.

Case No.
16-cv-00254(DRH)(AKT)

**DECLARATION OF STEVEN JOHN MOSER IN OPPOSITION TO DEFENDANTS'
MOTION FOR SUMMARY JUDGMENT AND IN SUPPORT OF PLAINTIFF
VILLATORO'S CROSS-MOTION FOR SUMMARY JUDGMENT**

I, Steven John Moser, hereby declare under penalty of perjury pursuant to 28 U.S.C. 1746 that the following is true and correct:

1. I represent the Plaintiff Aristides Alfredo Villatoro s/h/a Aristides Alfredo Dillatoro.
2. I make this affirmation based upon my personal knowledge, as well as a review of the documents submitted by Defendants in support of their motion for Summary Judgment.
3. I have a degree in Finance and Economics and worked as a financial accountant for following graduation. I have over 20 years of advanced Microsoft excel experience and use the same to compute damages in wage and hour litigation.
4. I have annexed hereto as Exhibit 1 an Excel Spreadsheet that I personally prepared, titled "Aristides Villatoro's Summary Judgment Calculations."
5. The information used to prepare this spreadsheet was taken directly from the Defendants' Spreadsheet (Exhibit F to the Declaration of Dennis D'Onofrio), and Mr. Villatoro's Timecards (Exhibit E to the Declaration of Dennis D'Onofrio).

6. The information in the columns highlighted in blue was taken directly from Columns B, I, J and H of the Defendants' Spreadsheet.

7. Columns I and J of Defendant's spreadsheet show the total regular and overtime hours recorded as worked each week.

8. Column AA (highlighted in grey) is the sum of Mr. Villatoro's regular and overtime hours (columns I and J from Defendant's Spreadsheet), and represents the total hours worked during each workweek.

9. The Plaintiff's "Straight Wages Earned" were computed by multiplying Mr. Villatoro's regular rate of \$9 per hour by his non-overtime hours.

10. The Plaintiff's "Overtime Wages Earned" were computed by multiplying Mr. Villatoro's overtime rate of \$13.50 per hour by his overtime hours.

11. I personally reviewed the timecards (Exhibit E to the Declaration of Dennis D'Onofrio) and counted each day in which the spread of hours exceeded 10. That information was entered in the column highlighted in orange. The number of days in which the spread of hours exceeded ten was multiplied by the applicable minimum wage to compute "Spread of Hours Owed."

12. The total wages owed to Mr. Villatoro is shown in the "TOTAL EARNED PAY." I calculated this amount by adding "Straight Wages Earned", "Overtime Wages Earned", and "Spread of Hours Pay."

13. This was compared to the total wages paid to Mr. Villatoro (shown in Column H, highlighted in blue, and taken from Defendants' spreadsheet).

14. During each and every week of the Plaintiff's employment, he was underpaid. (see Column titled "Amount Underpaid", highlighted in red).

15. Annexed hereto as Exhibit 2 is a second spreadsheet that I prepared titled “Aristides Villatoro’s Summary Judgment Calculations – ½ Hour Daily Credit Given.”

16. This spreadsheet is identical to the first, except that for each workday, a credit of ½ hour was gifted to the Defendants (see Columns AA, BB & CC, highlighted in grey). I calculated the weekly credit (shown in Column BB), by multiplying the total days worked each week (Column AA) by 1/2 hour. I then computed the total hours worked (Column CC) by adding the straight and overtime hours from defendants’ spreadsheet (Columns I & J) and deducting the weekly credit (Column CC).

17. Even when giving the Defendants a credit of ½ hour each workday, the Defendants failed to pay the Plaintiff all compensation to which he was entitled. *See* Column titled “Amount Underpaid”, highlighted in red.

18. I have annexed hereto as Exhibit 3 an excel spreadsheet which breaks-down the “Amount Underpaid” from Exhibit 1 into spread of hours and overtime components. The overtime owed was computed by deducting unpaid spread of hours pay from the “Amount Underpaid.”

19. I have annexed hereto as Exhibit 4 a computation of overtime, spread of hours, liquidated damages, wage notice damages, wage statement damages, and prejudgment interest.

20. I have annexed hereto as Exhibit 5 a true and accurate copy of the Deposition transcript of Dennis D’Onofrio.

21. I have annexed hereto as Exhibit 6 a true and accurate copy of the Deposition transcript of Philip D’Onofrio.

22. I have annexed hereto as Exhibit 7 a true and accurate copy of Defendants’ answer to the complaint dated May 16, 2016 (ECF No. 18).

23. I have annexed hereto as Exhibit 8 a true and accurate copy of Defendants' answer to the amended complaint dated April 12, 2018 (ECF No. 45).

Dated: Glen Cove, New York
January 21, 2020

/s/ Steven John Moser
Steven John Moser